



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R01-OAR-2021-0945; FRL-9487-01-R1]

### Air Plan Approval; New Hampshire; Conformity

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of New Hampshire. This submission revises previously approved transportation conformity criteria and procedures related to interagency consultation and enforceability of certain transportation-related control measures and mitigation measures. In addition, the revision continues to rely on the Federal rule for General Conformity. The intended effect of this action is to approve State criteria and procedures to govern conformity determinations. This action is being taken in accordance with the Clean Air Act.

**DATES:** Written comments must be received on or before **[Insert date 30 days after date of publication in the Federal Register]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R01-OAR-2021-0945 at <https://www.regulations.gov>, or via email to [rackauskas.eric@epa.gov](mailto:rackauskas.eric@epa.gov). For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the

official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the “**For Further Information Contact**” section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. Publicly available docket materials are available at <https://www.regulations.gov> or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square – Suite 100, Boston, MA. EPA requests that, if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office’s official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays and facility closures due to COVID-19.

**FOR FURTHER INFORMATION CONTACT:** Eric Rackauskas, Air Quality Branch, U.S. Environmental Protection Agency, EPA Region 1, 5 Post Office Square - Suite 100, (Mail code 05-2), Boston, MA 02109 - 3912, tel. (617) 918-1628, email [rackauskas.eric@epa.gov](mailto:rackauskas.eric@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

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#### **I. Background and Purpose**

On September 9, 2021, the New Hampshire Air Resources Division (ARD) submitted a revision to its State Implementation Plan (SIP) consisting of amendments to Env-A 1500, *Conformity*. This revision consists of minor administrative language changes, updated definitions and references to Federal rules, and clarifications to roles and responsibilities for Federal, state, and municipal partners.

a. *What is Transportation Conformity?*

Transportation conformity is required under Section 176(c) of the Clean Air Act to ensure that Federally-supported highway, transit projects, and other activities are consistent with (“conform to”) the purpose of the SIP. Conformity currently applies to areas that are designated nonattainment, and those redesignated to attainment after 1990 (maintenance areas) with plans developed under section 175A of the Clean Air Act, for the following transportation related criteria pollutants: ozone, particulate matter (PM<sub>2.5</sub> and PM<sub>10</sub>), carbon monoxide (CO), and nitrogen dioxide (NO<sub>2</sub>). Conformity to the purpose of the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the relevant national ambient air quality standards. The transportation conformity regulation is found in 40 CFR Part 93, subpart A and provisions related to conformity SIPs are found in 40 CFR 51.390.

b. *What is General Conformity?*

General Conformity is a requirement of section 176(c) of the Clean Air Act (CAA) Amendments of 1990. General Conformity is a safeguard that no action by the Federal government interferes with a SIP’s protection of the National Ambient Air Quality Standards (NAAQS). Under General Conformity, any action by the Federal government cannot: cause or contribute to any new violation of any standard in any area; interfere with provisions in the applicable SIP for maintenance of any standard; increase the frequency or severity of any existing violation of any standard in any area; or delay timely attainment of any standard, any required interim emission reductions, or any other milestones, in any area. The general

conformity regulation is found in 40 CFR Part 93, subpart B and provisions related to conformity SIPs are found in 40 CFR 51.851.

On April 5, 2010, EPA revisited the Federal General Conformity Requirements Rule to clarify the conformity process, authorize innovative and flexible compliance approaches, remove outdated or unnecessary requirements, reduce the paperwork burden, provide transition tools for implementing new standards, address issues raised by Federal agencies affected by the rules, and provide a better explanation of conformity regulations and policies (75 FR 17254). This April 2010 General Conformity rule eliminated the Federal regulatory requirement for states to adopt and submit general conformity SIPs, instead making submission of a general conformity SIP a state option.

*c. Evaluation of State Submittal*

EPA previously approved a version of EnvA-1500 into the New Hampshire SIP on November 29, 2013 (78 FR 71504). For transportation conformity, the September 9, 2021, revision contains updated references to the Code of Federal Regulations (CFR), updates to public comment period timeframes, and clarifications to roles of interagency partners. Specifically, the rule updates multiple references to the CFR to the April 1, 2018, version from April 1, 2011. The rule also changes language for a public comment for planning organizations and New Hampshire Department of Transportation (NHDOT) from “a minimum of 10 days” to “between 10 and 30 days,” to match language in the NHDOT Statewide Transportation Improvement Program (STIP) Revision Procedures.

The New Hampshire submittal also provides updated language to project-level conformity determinations for carbon monoxide (CO) hot spot areas. EPA notes that New Hampshire’s twenty-year maintenance period for the CO NAAQS expired on January 29, 2021. As a result of this maintenance period expiration, conformity requirements for the CO standard, including hot spot analyses, also expired.<sup>1</sup> No conformity or project level hot spot analyses are required for the

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<sup>1</sup> See Docket for letter to NHDOT

State's CO maintenance area, but the language would continue to apply in the event of a future more stringent CO NAAQS and/or future nonattainment classification.

The NH submittal contains updated language for General Conformity. As noted above, States are not required to submit state-level General Conformity regulations into the SIP, rather they can rely upon the federal provisions. The New Hampshire submittal adequately refers to the General Conformity Federal rule for implementation and contains only minor changes in references to the 2018 Code of Federal Regulations, as mentioned above.

## **II. Proposed Action**

EPA is proposing to approve New Hampshire's Env-A 1500 *Conformity* into the New Hampshire SIP. This revision and proposed approval are consistent with the CAA. EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to this proposed rule by following the instructions listed in the **ADDRESSES** section of this *Federal Register*.

## **III. Incorporation by Reference**

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference of NH's updated Env-A 1500, *Conformity*, as discussed in sections I. and II. of this preamble, into 40 CFR part 52. The EPA has made, and will continue to make, these documents generally available through <https://www.regulations.gov> and at the EPA Region 1 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

## **IV. Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

#### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: January 24, 2022.

Deborah Szaro,  
Acting Regional Administrator,  
EPA Region 1.

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